

# HOUSE BILL No. 1624

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-2.

**Synopsis:** Registration of state contractors. Requires certain persons who enter into contracts with an agency in the executive branch of state government to register with the state ethics commission. Requires registrants to make certain reports. Provides for civil and criminal penalties for violations.

**Effective:** July 1, 2003.

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January 16, 2003, read first time and referred to Committee on Appointments and Claims.

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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1624

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-2-6-4, AS AMENDED BY P.L.44-2001,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2003]: Sec. 4. (a) The commission may do any of the  
4 following:

5 (1) Upon a vote of four (4) members, or upon the written request  
6 of the governor, initiate and conduct an investigation.

7 (2) Receive and hear any complaint which alleges a violation of  
8 this chapter, **IC 4-2-7**, a rule adopted under this chapter, or any  
9 other statute or rule establishing standards of official conduct of  
10 state officers, employees, or special state appointees.

11 (3) Obtain information and, upon a vote of four (4) members,  
12 compel the attendance and testimony of witnesses and the  
13 production of pertinent books and papers by a subpoena  
14 enforceable by the circuit or superior court of the county where  
15 the subpoena is to be issued.

16 (4) Recommend legislation to the general assembly relating to the  
17 conduct and ethics of state officers, employees, and special state

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1 appointees, including whether additional specific state officers or  
 2 employees should be required to file a financial disclosure  
 3 statement under section 8 of this chapter.

4 (5) Adopt rules under IC 4-22-2 to implement this chapter **and**  
 5 **IC 4-2-7.**

6 (6) Prescribe and provide forms for statements required to be filed  
 7 under this chapter **or IC 4-2-7.**

8 (7) Accept and file information:

9 (A) voluntarily supplied; and

10 (B) that exceeds the requirements of this chapter.

11 (8) Inspect financial disclosure forms.

12 (9) Notify persons who fail to file forms required under this  
 13 chapter.

14 (10) Develop a filing, a coding, and an indexing system required  
 15 by this chapter and IC 35-44-1-3(f).

16 (11) Conduct research.

17 (12) Prepare interpretive and educational materials and programs.

18 (b) The commission shall do the following:

19 (1) Act as an advisory body by issuing advisory opinions to  
 20 interpret this chapter, **IC 4-2-7**, the commission's rules, or any  
 21 other statute or rule establishing standards of official conduct  
 22 upon:

23 (A) request of:

24 (i) a state officer or a former state officer;

25 (ii) an employee or a former employee;

26 (iii) a person who has or had a business relationship with an  
 27 agency; or

28 (iv) a special state appointee; or

29 (B) motion of the commission.

30 (2) Conduct its proceedings in the following manner:

31 (A) When a complaint is filed with the commission, the  
 32 commission may:

33 (i) reject, without further proceedings, a complaint that the  
 34 commission considers frivolous or inconsequential;

35 (ii) reject, without further proceedings, a complaint that the  
 36 commission is satisfied has been dealt with appropriately by  
 37 an agency;

38 (iii) upon the vote of four (4) members, determine that the  
 39 complaint does not allege facts sufficient to constitute a  
 40 violation of this chapter or the code of ethics and dismiss the  
 41 complaint; or

42 (iv) forward a copy of the complaint to the attorney general,

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the prosecuting attorney of the county in which the alleged violation occurred, the state board of accounts, a state officer, the appointing authority, or other appropriate person for action, and stay the commission's proceedings pending the other action.

(B) If a complaint is not disposed of under clause (A), a copy of the complaint shall be sent to the person alleged to have committed the violation.

(C) If the complaint is not disposed of under clause (A), or when the commission initiates an investigation on its own motion or upon request of the governor, the commission shall promptly investigate the alleged violation. If, after the preliminary investigation, the commission finds by a majority vote that probable cause exists to support an alleged violation, it shall convene a public hearing on the matter within sixty (60) days after making the determination. The respondent shall be notified within fifteen (15) days of the commission's determination. The commission's evidence relating to an investigation is confidential until the earlier of:

- (i) the time the respondent is notified of the hearing; or
- (ii) the time the respondent elects to have the records divulged.

However, the commission may acknowledge the existence and scope of an investigation or that the commission did not find probable cause to support an alleged violation.

(D) If a hearing is to be held, the respondent may examine and make copies of all evidence in the commission's possession relating to the charges. At the hearing, the charged party shall be afforded appropriate due process protection consistent with IC 4-21.5, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses.

(E) After the hearing, the commission shall state its findings of fact. If the commission, based on competent and substantial evidence, finds by a majority vote that the respondent has violated this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of state officers, employees, or special state appointees, it shall state its findings in writing in a report, which shall be supported and signed by a majority of the commission members and shall be made public. The report may make a recommendation for the sanctions to be imposed by the

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1 appointing authority or state officer for the violation,  
2 including:

- 3 (i) a letter of counseling;
- 4 (ii) a reprimand;
- 5 (iii) a suspension with or without pay; or
- 6 (iv) the dismissal of an employee.

7 (F) If the commission, based on competent and substantial  
8 evidence, finds by a majority vote a violation of this chapter,  
9 a rule adopted under this chapter, or any other statute or rule  
10 establishing standards of official conduct of state officers,  
11 employees, or special state appointees, the commission may  
12 also take any of the actions provided in section 12 of this  
13 chapter.

14 (G) The report required under clause (E) shall be presented to:

- 15 (i) the respondent;
- 16 (ii) the appointing authority or state officer of the employee,  
17 former employee, or special state appointee; and
- 18 (iii) the governor.

19 (H) The commission may also forward the report to any of the  
20 following:

- 21 (i) The prosecuting attorney of each county in which the  
22 violation occurred.
- 23 (ii) The state board of accounts.
- 24 (iii) The state personnel director.
- 25 (iv) The attorney general.
- 26 (v) A state officer.
- 27 (vi) The appointing authority.
- 28 (vii) Any other appropriate person.

29 (I) If the commission finds the respondent has not violated a  
30 code or statutory provision, it shall dismiss the charges.

31 (3) Maintain an index of conflict of interest disclosures received  
32 by the commission under IC 35-44-1-3.

33 **(4) Implement IC 4-2-7.**

34 (c) Notwithstanding IC 5-14-3-4(b)(8)(C), the records of the  
35 commission concerning the case of a respondent that are not  
36 confidential under subsection (b)(2)(C) shall be available for inspection  
37 and copying in accordance with IC 5-14-3.

38 SECTION 2. IC 4-2-7 IS ADDED TO THE INDIANA CODE AS  
39 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
40 1, 2003]:

41 **Chapter 7. Registration of Persons Doing Business with the**  
42 **State**

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1       Sec. 1. As used in this chapter, "activity report" means the  
2 activity report required by section 14 of this chapter.

3       Sec. 2. As used in this chapter, "agency" has the meaning set  
4 forth in IC 4-2-6-1.

5       Sec. 3. As used in this chapter, "commission" refers to the state  
6 ethics commission created by IC 4-2-6-2.

7       Sec. 4. As used in this chapter, "compensation" has the meaning  
8 set forth in IC 4-2-6-1.

9       Sec. 5. (a) As used in this chapter, "expenditure" means an  
10 advance, a conveyance, a deposit, a distribution, a loan, a payment,  
11 a pledge, a subscription of money, or a transfer of any property.

12       (b) The term includes a contract, an agreement, a promise, or an  
13 obligation, whether or not legally enforceable, to do any activity  
14 regarding property described in subsection (a).

15       (c) The term does not include a contribution (as defined in  
16 IC 3-5-2-15).

17       Sec. 6. (a) As used in this chapter, "gift" means the voluntary  
18 transfer of property without consideration.

19       (b) The term does not include a contribution (as defined in  
20 IC 3-5-2-15).

21       Sec. 7. As used in this chapter, "immediate family" means all  
22 the following:

23       (1) An individual's spouse residing in the individual's  
24 household.

25       (2) An individual's unemancipated children.

26       Sec. 8. As used in this chapter, "property" has the meaning set  
27 forth in IC 35-41-1-23.

28       Sec. 9. As used in this chapter, "registration statement" refers  
29 to the registration statement provided for by section 12 of this  
30 chapter.

31       Sec. 10. As used in this chapter, "state contract" refers to a  
32 contract between an agency and a person for the person to provide  
33 supplies or services to the agency for compensation.

34       Sec. 11. As used in this chapter, "state contractor" refers to any  
35 of the following:

36       (1) A person who has a contract with an agency.

37       (2) A person who spends a total of at least five hundred  
38 dollars (\$500) in a year on activities related to entering into a  
39 state contract, regardless of whether the person enters into a  
40 state contract.

41       (3) A person retained, either as an employee or an  
42 independent contractor:

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- (A) by a person described in subdivision (1) or (2);
- (B) for total compensation of at least five hundred dollars (\$500) in a year;
- (C) to appear before, contact, or transact business with an officer or employee of an agency; and
- (D) to engage in an activity related to the award or administration of a state contract.

**Sec. 12. (a)** Except as provided in subsection (b), a person shall file a registration statement with the commission not later than fifteen (15) days after:

- (1) the person submits a bid, a proposal, or an offer to enter into a state contract; or
- (2) the person is retained, either as an employee or an independent contractor, by a state contractor for activities described in section 11(3) of this chapter.

**(b)** A person is not required to file a registration statement if the person has:

- (1) already filed a registration statement under this section; and
- (2) not filed a termination statement under this section.

**(c)** A registration statement must include the following information:

- (1) The state contractor's name.
- (2) The state contractor's business office address.
- (3) The state contractor's telephone number.
- (4) The state contractor's electronic mail address.
- (5) The nature of the state contractor's business.
- (6) The nature of the state contract.
- (7) The full name of each of the following:
  - (A) Each of the partners who own the state contractor, if any.
  - (B) Each of the officers of the state contractor, if any.
  - (C) Each other person who has control of the state contractor.
  - (D) Each person retained by the state contractor, either as an employee or an independent contractor, who is described by section 11(3) of this chapter.
- (8) If the state contractor is described by section 11(3) of this chapter, the following information:
  - (A) The nature of the state contractor's business or employment.
  - (B) The name and business address of each person who

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retains the state contractor, either as an employee or an independent contractor, to perform any activity described in section 11(3) of this chapter.

(C) The nature of each state contract for which the state contractor is retained.

(9) Other information that the commission requires by rule adopted under IC 4-22-2.

(d) A registration statement must be made under penalties for perjury.

(e) A state contractor shall file an appropriate amendment if a material change occurs in any of the information contained in a registration statement not later than fifteen (15) days after the change.

(f) A state contractor may file a termination statement after the state contractor ceases the activity that required registration. Filing of a termination statement does not relieve the state contractor of the reporting requirements of section 13 of this chapter.

Sec. 13. (a) A state contractor shall file an activity report at the following times:

(1) At the time the state contractor first files a registration statement under section 12 of this chapter.

(2) Not later than August 1 of each year after the state contractor files the activity report required by subdivision (1).

(3) At the time the state contractor files a termination statement under section 12 of this chapter.

(b) An activity report must contain the following information:

(1) Total expenditures relating to all state contracts (prorated among each state contract) and itemized to include the following expenditures:

(A) Compensation and reimbursements to persons described in section 11(3) of this chapter retained by the state contractor.

(B) Expenditures for receptions and other entertainment, including meals for officers and employees of agencies.

(C) Gifts made to an officer, an employee, or a member of the immediate family of an officer or employee of an agency.

(2) A list of the state contracts concerning which expenditures were made during the previous year.

(3) A statement of expenditures and gifts that equal one hundred dollars (\$100) or more in one (1) day, or that

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together total more than five hundred dollars (\$500) during the previous year, if the expenditures and gifts are made by the state contractor or the state contractor's agent to benefit an officer, an employee, or a member of the immediate family of an officer or employee of an agency.

(4) The name of the beneficiary of each expenditure or gift made by the state contractor or the state contractor's agent that is required to be reported under subdivision (3).

(5) Other information that the commission requires by rule adopted under IC 4-22-2.

(c) An activity report is not required to include expenditures for the following:

(1) Overhead costs.

(2) Charges for any of the following:

(A) Postage.

(B) Express mail service.

(C) Stationery.

(D) Facsimile transmissions.

(E) Telephone calls.

(3) Expenditures for the personal services of clerical and other support staff who are not state contractors.

(4) Expenditures for leasing or renting space.

(5) Expenditures for lodging, meals, and other personal expenses of a state contractor.

(d) An activity report must be made under the penalties for perjury.

(e) An activity report must cover the following period:

(1) If the activity report is the activity report filed with a state contractor's registration statement, the year before the date of the activity report.

(2) If the activity report is the first activity report described in subsection (a)(2) filed after the activity report filed under subdivision (1), the period:

(A) beginning with the date of the registration statement; and

(B) ending June 30 after the date of the registration statement.

(3) If the activity report is the annual activity report described in subsection (a)(2) other than the activity report described in subdivision (2), the year ending June 30 before the date the activity report is required to be filed.

(4) If the activity report is the activity report filed with a state

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contractor's termination statement, the period:

(A) beginning after the last date covered by the most recent activity report filed by the state contractor; and

(B) ending on the date of the termination statement.

(f) A state contractor shall obtain and preserve all documents necessary to substantiate an activity report for four (4) years after the date of filing of the report. A state contractor shall make these documents available for inspection upon request by the commission.

Sec. 14. The commission shall do the following to implement this chapter:

(1) Prescribe forms for the registration statements, activity reports, and other documents required to be filed under this chapter. The commission shall make the forms available to persons required to file the registration statements, activity reports, and other documents.

(2) Prepare and publish instructions describing recommended, uniform methods of reporting for use by persons required to file statements and reports under this chapter.

(3) Make statements, reports, and other documents filed with the commission under this chapter available for public inspection and copying during regular office hours.

(4) Compile and maintain an index of all reports and statements filed with the commission under this chapter to facilitate public access to the reports and statements.

(5) Prepare and publish annual summaries of statements and reports filed with the commission under this article.

(6) Preserve statements and reports filed with the commission under this chapter for four (4) years from the date the commission receives a statement or report.

Sec. 15. (a) The commission shall inspect and audit at least five percent (5%) of all registration statements and reports filed with the commission under this chapter by requiring a state contractor to produce verifying documents. The statements and reports inspected and audited shall be selected at random by a computer random number generator.

(b) Subsection (a) does not limit the commission from inspecting and auditing any statement or report if the commission has reason to believe that a violation of this chapter may have occurred.

(c) Verifying documents required under subsection (a) are confidential while in the possession of the commission.

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(d) The commission shall notify by certified mail, return receipt requested, a person required to file statements and reports under this chapter of any violations or errors discovered during inspections or audits conducted under this section not later than thirty (30) days after discovery of the errors or violations.

(e) A person who receives a notification under subsection (d) shall file a corrected statement or report not later than thirty (30) days after receiving the notification.

Sec. 16. (a) The commission may impose sanctions under this section for violations of this chapter under the procedures described in IC 4-2-6.

(b) The commission may act under this section based on:

- (1) information available to the commission; or
- (2) a complaint filed under rules adopted by the commission under IC 4-22-2.

(c) If the commission finds that a person has:

- (1) failed to file a report required by this chapter; or
- (2) filed a report required by this chapter after the date the report was due;

the commission shall impose a civil penalty on that person of ten dollars (\$10) a day for each day the report was not filed after the date the report was due.

(d) If the commission finds that:

- (1) a statement or report required to be filed under this chapter was materially incorrect;
- (2) the person filing the report was requested to file a corrected statement or report; and
- (3) a corrected statement or report has not been filed;

the commission shall impose a civil penalty on that person of not more than five hundred dollars (\$500).

(e) In addition to other penalties imposed under this section, the commission may do either or both of the following if the commission finds by a vote of four (4) commission members that a person has knowingly or intentionally violated this chapter:

- (1) Revoke the person's registration.
- (2) Bar the person from registering under this chapter for a period of not more than ten (10) years.

(f) Notwithstanding subsection (c) or (d), the commission may reduce a penalty required to be imposed if the commission finds by a vote of four (4) commission members that justice requires mitigation of the penalty.

(g) The attorney general shall institute appropriate proceedings

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1 at the commission's request to collect civil penalties imposed under  
2 this section.

3 Sec. 17. Notwithstanding any other law, an agency may not  
4 award a contract to a person who:

5 (1) is not registered under this chapter; or

6 (2) is barred from registering under this chapter.

7 Sec. 18. A person required to register under this chapter who  
8 knowingly or intentionally:

9 (1) appears before, contacts, or transacts business with an  
10 officer or employee of an agency regarding the award or  
11 administration of a state contract; and

12 (2) fails to register or is barred from registering under this  
13 chapter;

14 commits a Class D felony.

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